D E P A R T M E N T O F S T A T E R E V E N U E

Revenue Ruling # 99-01SFR

April 18, 2001

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I S S U E

Special Fuel Tax—Imposition

Authority: IC §§ 6-6-2.5-28(a) and (f) and -30(a)(8); IC § 6-8.1-5-4(a); *Western Adjustment and Inspection Co. v. Gross Income Tax Div.*, 236 Ind. 639, 142 N.E.2d 630 (1957); *Keller Oil Co. v. Indiana Dep't of State Revenue*, 512 N.E.2d 501 (Ind. Tax 1987)

The taxpayer asks the Department to rule that all of the diesel fuel consumed by two fleets of motor vehicles that it operates predominantly on private roads, but occasionally on Indiana public highways, is exempt from special fuel tax. The argument supporting the taxpayer's request is that its fleets' taxable on-highway consumption of diesel fuel is *de minimis*.

STATEMENT OF FACTS

The taxpayer is a limited liability company that, among other business activities, owns and operates a common pavilion for two Indiana riverboat casinos. As part of its pavilion business, the taxpayer also operates two fleets of motor vehicles as shuttles between its employee and casino patron parking lots and the employee and public entrances to the pavilion. The Department will hereafter describe these two fleets of motor vehicles as the "employee transportation" and the "patron transportation" fleets, respectively. The respective kinds of motor vehicles in these fleets are described as being comparable to school buses and motor coaches. All the vehicles in both fleets are powered by undyed diesel fuel from bulk fuel storage tanks located on pavilion property. With one exception, all the transportation by all the motor vehicles in these two fleets takes place on private roads also located on pavilion property. The exception is for occasional (semi-

monthly or monthly) trips under their own power over public highways to a garage in a city six miles away for routine maintenance. The taxpayer has plated all the motor vehicles in both fleets with the Bureau of Motor Vehicles.

DISCUSSION

There is no *de minimis* exclusion or exemption from tax under the Special Fuel Tax Law of 1993, P.L. 277-1993(ss), sec. 44, V 1993 Ind. Acts 4555, 4734-4757, codified as amended at IC ch. 6-6-2.5 (1993 and 1998). IC § 6-6-2.5-28(a) imposes the tax at the rate of $0.16 per gallon "on all special fuel sold or used in producing or generating power for propelling motor vehicles except fuel used under section 30(a)(8) of this chapter." IC § 6-6-2.5-30(a)(8) exempts, among other categories, "[s]pecial fuel used for nonhighway purposes, … [,]" which would constitute the majority of the fuel the taxpayer consumes on the facts it has presented to the Department. However, the taxpayer has also stated that the Bureau of Motor Vehicles has plated all of the vehicles in both the employee and patron transportation fleets. IC § 6-6-2.5-28(f) (1998), which addresses this circumstance, reads as follows:

> (f) The department shall consider it a rebuttable presumption that special fuel consumed in a motor vehicle plated for general highway use is subject to the tax imposed under this chapter. *A person claiming exempt use of special fuel in such a vehicle must maintain adequate records as required by the department to document the vehicle's taxable and exempt use.*

(Emphasis added.) As a general principle, this recordkeeping requirement is nothing new, either as a matter of statutory duty or judicial opinion. IC § 6-8.1-5-4(a), which is part of the Tax Administration Act (P.L. 61, sec. 1, I 1980 Ind. Acts 660, 660-84, codified as amended at IC art. 6-8.1 (1993 and 1998), imposes the taxpayer's general duty to keep books and records. It reads in relevant part as follows:

> (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, … .

Id. More specifically for present purposes, in *Western Adjustment and Inspection Co. v. Gross Income Tax Div.*, 236 Ind. 639, 142 N.E.2d 630 (1957), the Indiana Supreme Court said that

> [I]t is a general rule that a taxpayer must segregate and separate items having different tax liability or exemptions in order to bring himself within such provisions, and *a failure or inability to do so subjects the unsegregated amount to the regular rate* or the highest rate if so provided by statute.

Id. at 643, 142 N.E.2d at 632 (emphasis added). If a special fuel taxpayer in particular is audited, a bare assertion that the special fuel was consumed off-road will not be enough to abate the assessment in the absence of inventory or other pertinent fuel records. *See Keller Oil Co. v. Indiana Dep't of State Revenue*, 512 N.E.2d 501, 503 (Ind. Tax 1987) (denying injunctive relief from collection for that reason).

RULING

For the reasons stated above, the Department denies your firm's request for a *de minimis* consumption exemption from the Special Fuel Tax Law of 1993 on the facts presented. The statute does not provide for any such exemption. The taxpayer must maintain books and records adequate enough to exempt the on-premises, off-road part of its special fuel tax consumption.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this

ruling, a change in a statute, regulation or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE